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Lyman Mark Tondel Jr.

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VENUE UNDER THE CORPORATE REORGANIZATION ACT

By LYMAN MARK TONDEL, JR.*

INTRODUCTION

IN the course of his critical history of the reorganization in equity of the Chicago, Milwaukee, and St. Paul Railroad, Max Lowenthal pointed out the care with which the lawyers for the petitioner in that case selected the tribunal which they wished to supervise the receivership proceedings.¹ It was there shown how, since any one of many courts could take jurisdiction,² the attorneys instituted suit in that court where the decided law was most favorable to their clients' interests and before that judge who was most likely to appoint their nominees to the all-important posts of receivers.

As will be shown later petitions under section 77B of the National Bankruptcy Act, commonly known as the Corporate Reorganization Act, may be filed in any of several courts. Where it would be best to file the petition in any given case remains a practical problem of the first magnitude. The choice of court at the outset frequently will determine whether the judge will approve the petition as filed in good faith; whether he will be favorable to the petitioners' nominees for receivers or trustees; whether he will be sufficiently informed concerning financial problems generally, and the affairs of the intended "debtor" in particular, to be able to supervise intelligently, pending reorganization, the administration of the estate; whom the judge will be likely to appoint as masters; whether he will be likely to confirm a plan favorable to the petitioners; and whether the compensation of counsel, trustees, and committees will be inadequate, reasonable, or extravagant.

As is readily seen the varying attitudes of judges with respect to these problems and the opportunity of counsel to choose which

*A.B. University of Washington; student in the Law School of Harvard University. This paper was prepared for a graduate course in Corporation Finance conducted by Prof. E. Merrick Dodd.

¹Lowenthal, *The Investor Pays*, 112 ff.

²In federal equity proceedings a consent receivership could be instituted in any federal district in the country. *Central Trust Co. v. McGeorge*, (1894) 151 U. S. 129, 14 Sup. Ct. 286, 38 L. Ed. 98.

judge shall supervise a particular reorganization gives great leeway to both conscientious and unscrupulous lawyers in achieving their respective ends. The former may seek that court whose forum is most convenient to all parties and witnesses, and the judge whose wisdom and familiarity with the debtor's problems will be conducive to the soundest and fairest administration and reorganization. On the other hand lawyers whose only end is their own advancement may select that judge who will approve their nominees as receivers or trustees without regard to merit; whose blindness or ignorance will enable the petitioners to administer the estate and reorganize the corporation in their own interests; and who may be counted on to allow disproportionately large fees.

It is therefore of the greatest importance to determine where petitions may be filed under section 77B, and what provisions there are to guard against those who would misuse the alternatives preserved for them under the Act. It is also important to consider certain conflicts of jurisdiction which have arisen, and what means there may be of avoiding them in the future.

WHERE A PETITION MAY BE FILED

The Act provides that the debtor shall file its petition "with the court in whose territorial jurisdiction the corporation, during the preceding six months or the greater portion thereof, has had its principal place of business or its principal assets, or in any territorial jurisdiction in the State in which it was incorporated."³

The location of the debtor's principal place of business was a basis of jurisdiction under Section 2 of the original Bankruptcy Act.⁴ The great volume of cases which arose under section 2 involving the question of where a particular corporate debtor's principal place of business was located, provide a sizable body of precedent to aid in the solution of the same problem under section 77B. A large proportion of those cases dealt with corporations which were incorporated or had offices in one state but operated their plants in other states. It was quite uniformly held that it was not the technical domicile, nor the location of the sales⁵ or

³Section 77B(a), found in (1934) 48 Stat. at L. 912, 11 U. S. C. A. sec. 207(a) (Supp. 1935). For an early comment on the meaning of this provision see Weiner, *Corporate Reorganization: Section 77B of the Bankruptcy Act*, (1934) 34 Col. L. Rev. 1173, 1175.

⁴Section 2(1), found in (1898) 30 Stat. 545, 11 U. S. C. A. sec. 11.

⁵In *re Devonian Spring Co.*, (D.C. N.D. Ohio 1920) 272 Fed. 527; In *re R. C. Stanley Shoe Co.*, (D.C. N.H. 1934) 8 F. Supp. 681.

executive offices,⁶ nor the location of the corporate records,⁷ nor the residence of the dominating stockholder,⁸ which determined the principal place of business, but rather the place where most of the business was conducted, for the carrying on of which the corporation was chartered, whether it were manufacturing, mining, selling, or transportation.⁹ However, where most of the business was actually carried on from the executive offices, their location was held to be controlling.¹⁰

The courts treated this question as one of fact,¹¹ and not as a question of corporate intention.¹² By the terms of section 77B the question of fact, if properly raised, is for the judge to decide summarily.¹³ There are certain procedural aids which the cases provide him. Some courts have declared that if a corporation specifies in its charter that a certain locality is to be its principal place

⁶In *re E. & G. Theatre Co.*, (D.C. Mass. 1915) 223 Fed. 657; In *re American & British Mfg. Corp.*, (D.C. Conn. 1924) 300 Fed. 839.

⁷In *re Worcester Footwear Co.*, (D.C. Mass. 1918) 251 Fed. 760.

⁸In *re Pusey & Jones Co.*, (C.C.A. 2d Cir. 1922) 286 Fed. 88.

⁹In *re Elmira Steel Co.*, (D.C. N.Y. 1901) 109 Fed. 456; In *re Perry Aldrich Co.*, (D.C. Mass. 1908) 165 Fed. 249; In *re Tygarts River Coal Co.*, (D.C. W.Va. 1913) 203 Fed. 178; *Home Powder Co. v. Geis*, (C.C.A. 8th Cir. 1913) 204 Fed. 568; In *re Beiermeister Bros. Co.*, (D.C. N.Y. 1913) 208 Fed. 945; In *re San Antonio Land and Irrigation Co.*, (D.C. N.Y. 1916) 228 Fed. 984; *Continental Coal Corp. v. Rozelle Bros.*, (C.C.A. 6th Cir. 1917) 242 Fed. 243; In *re Monarch Oil Corp.*, (D.C. Ohio 1920) 272 Fed. 524; *Dryden v. Ranger Refining & Pipe Line Co.*, (C.C.A. 5th Cir. 1922) 280 Fed. 257; *Lawrence v. Atlantic Paper & Pulp Corp.*, (C.C.A. 5th Cir. 1924) 298 Fed. 246; In *re Hudson River Nav. Corp.*, (C.C.A. 2d Cir. 1932) 59 F. (2d) 971; See also In *re Thomas McNally Co.*, (D.C. N.Y. 1913) 208 Fed. 291; In *re New Era Novelty Co.*, (D.C. N.J. 1916) 241 Fed. 298.

A similar problem was involved in those cases where the location of a bankrupt individual's principal place of business was involved. In *re Brice*, (D.C. Iowa 1899) 93 Fed. 942; In *re Plotke*, (C.C.A. 7th Cir. 1900) 104 Fed. 964; In *re Mackey*, (D.C. Del. 1901) 110 Fed. 355; In *re Knox*, (C.C.A. 6th Cir. 1926) 11 F. (2d) 743; *Milwaukee Corrugating Co. v. Flagge*, (C.C.A. 8th Cir. 1927) 19 F. (2d) 518.

¹⁰In *re Matthews Consolidated Slate Co.*, (C.C.A. 1st Cir. 1906) 144 Fed. 737; In *re Guanacevi Tunnel Co.*, (C.C.A. 2d Cir. 1912) 201 Fed. 316. The executive offices have also been held to be the principal place of business where the plant has not been operating for six months prior to the bankruptcy proceedings. In *re Marine Machine & Conveyor Co.*, (D.C. N.Y. 1899) 91 Fed. 630; In *re Pennsylvania Consol. Coal Co.*, (D.C. Pa. 1908) 163 Fed. 579.

¹¹*Continental Coal Corp. v. Rozelle Bros.*, (C.C.A. 6th Cir. 1917) 242 Fed. 243; see *Chicago Bank of Commerce v. Carter*, (C.C.A. 8th Cir. 1932) 61 F. (2) 986.

¹²In *re San Antonio Land & Irrigation Co.*, (D.C. N.Y. 1916) 228 Fed. 984.

¹³Section 77B(a), found in (1934) 48 Stat. at L. 913, 11 U. S. C. A. sec. 207(a) (Supp. 1935), says in part: "The judge shall determine summarily the issues presented by the pleadings, without the intervention of a jury." See In *re Cheney Bros.*, (D.C. Conn. 1935) 12 F. Supp. 609, 611.

of business, the burden of proof is on any party which alleges the principal place of business to be at another place.¹⁴ Other courts have made it clear, however, that such a designation is not controlling.¹⁵ It has also been judicially propounded that if a corporation formally indicates in its petition or elsewhere that it regards one place as its principal place of business, the burden of proof is there also shifted to those who contest that indication.¹⁶ It is well that these rules help to make the determination of the principal place of business as speedy as possible. Expediency is vital in the realm of reorganizations, for the occasion for such proceedings is almost invariably an emergency, and their protraction is costly.

Three cases under section 77B have raised the question of how to determine the location of a corporation's principal place of business. In *In re Consolidated Gas Utilities Co.*¹⁷ the court was faced with the solution of this problem with respect to a holding company which had subsidiaries in Texas, Kansas, and Oklahoma, engaged in the production and distribution of natural gas. Its president and secretary had their offices in Oklahoma City; its "books of account, primary records, original title papers, contracts," and abstracts were kept there; from that office it directed the operations of its subsidiaries. All the debtor's securities except those which were pledged, including the capital stock of its subsidiaries, were kept in Oklahoma City. Its minute books were kept in New York City, and its directors' meetings were held there. On these facts the court found that the holding company's principal place of business was in Oklahoma City. This result is in accord with the earlier cases which held that the executive offices were the principal place of business if they were the scene of the bulk of the corporation's activities.

The subsequent case of *In re Syndicate Oil Corporation*,¹⁸ which came up before the same court, raised the problem of

¹⁴*In re Tennessee Constr. Co.*, (C.C.A. 2d Cir. 1914) 213 Fed. 33; *In re R. H. Pennington & Co.*, (D.C. Ky. 1915) 228 Fed. 388; *In re Devonian Spring Co.*, (D.C. Ohio, 1920) 272 Fed. 527.

¹⁵*In re Wenatchee-Stratford Orchard Co.*, (D.C. Wash. 1913) 205 Fed. 964; *In re Beiermeister Bros. Co.*, (D.C. N.Y. 1913) 208 Fed. 945; *Lawrence v. Atlantic Paper & Pulp Corp.*, (C.C.A. 5th Cir. 1924) 298 Fed. 246.

¹⁶*In re Guanacevi Tunnel Co.*, (C.C.A. 2d Cir. 1912) 201 Fed. 316; *Lawrence v. Atlantic Paper & Pulp Corp.*, (C.C.A. 5th Cir. 1924) 298 Fed. 246; *In re Lone Star Shipbuilding Co.*, (C.C.A. 2d Cir. 1925) 6 F. (2d) 192; *In re Hudson River Navigation Corp.*, (C.C.A. 2d Cir. 1932) 59 F. (2d) 971.

¹⁷(D.C. Del. 1934) 8 F. Supp. 385.

¹⁸(D.C. Del. 1934) 9 F. Supp. 127.

whether the debtor's field activities and properties in the West, or its executive offices in Rochester, N. Y., where its president and general manager had their offices, and where the primary records were kept, constituted the principal place of business. The court held that the latter facts were determinative. This decision is at first glance contrary to the bulk of the decisions under section 2 of the Bankruptcy Act. However, in the *Syndicate Oil Case* the officers in the Rochester office exercised active control over the properties, operations, and employees in the West. They executed all contracts, drew all checks, prepared all financial statements, and decided upon the drilling of new wells. There may thus have been greater reason in this case for the court to hold the executive office to be the principal place of business. Reorganizers should nevertheless take warning from this case, that the location of the supervisory rather than that of the physical activities may be found by some courts to be the principal place of a corporation's business.

More in accord with the precedents was the decision in *Watters v. Hamilton Gas Co.*¹⁹ In that case almost all the field and office activities of the debtor gas company had been conducted for at least two years in West Virginia. The management had been in the hands of receivers whose offices were in West Virginia. The disgruntled former president of the debtor had meanwhile maintained his old offices in New York City. The court found no difficulty in holding that the principal place of business was in West Virginia.

The location of the debtor's principal assets as a basis of jurisdiction is an innovation under section 77B. Although no cases have yet been reported which have raised the question of where the principal assets may be said to be located, it would seem evident that this also is a question of fact for the judge, to be determined in each case by an examination of the territorial distribution of the corporate assets. It is worthy of note that in most of the older decisions in which the courts sought to define "principal place of business," the location of the bulk of the corporate assets was the basis for determining the "principal place of business," even though executive offices were located elsewhere.

¹⁹(D.C. W.Va. 1935) 10 F. Supp. 323, upon remand from *Hamilton Gas Co. v. Watters*, (C.C.A. 4th Cir. 1935) 75 F. (2d) 176, writ of certiorari denied Dec. 9, 1935, *In re Hamilton Gas Co.*, (C.C.A. 2d Cir. 1935) 79 F. (2d) 97.

Under section 77B the definition thus adopted would frequently reduce the number of courts in which petitions could be filed, by making the location of "principal assets" and "principal place of business" synonymous.

It is unfortunate that these tests of proper venue are so indefinite. Where nation-wide debtor corporations such as chains of theaters or mercantile houses seek relief under section 77B, it will frequently be an extremely difficult question of fact where their principal assets and principal places of business are located.²⁰ Usually the debtor will not be alone in seeking relief. In the same or other courts various groups of creditors will file their petition. To avoid unseemly contests between courts for jurisdiction and the delays of long-continued appeals, conscientious judges will want to be sure theirs is a proper venue before approving a petition. Detailed inquiries into the facts will be the result, and the proceedings, in which speed is especially important, will be extended indefinitely. If less controversial tests of jurisdiction could be devised, which would be as likely as those set forth in the Act to represent the best qualified forum, the amendment of section 77B to include them rather than the present controversial tests would be a boon to corporate reorganizations. Such a test might be the territorial jurisdiction where the greatest number of the debtor's employees reside; or where the greatest number of the corporation's debtors and creditors reside; or where the debtor owns, leases, or operates for business purposes property, both real and personal, of the greatest actual value as determined by the state tax assessors for the year preceding the filing of the petition; or a computation based on several such criteria. It might also be provided that a court would have jurisdiction, regardless of other factors, if it had, more than a month previously, appointed primary receivers of the debtor corporation.

May a corporation still have a principal place of business although it has been in the hands of a receiver for six months prior to the filing of the petition? This question has twice been answered in the affirmative by the courts under section 77B.²¹ In

²⁰For an example of the difficult questions of fact which may arise, see the elaborate master's report in *In re Pusey & Jones Co.*, (C.C.A. 2d Cir. 1922) 286 Fed. 88.

²¹*In re Consolidated Gas Utilities Co.*, (D.C. Del. 1934) 8 F. Supp. 385; *Watters v. Hamilton Gas Co.*, (D.C. W.Va. 1935) 10 F. Supp. 323, 330. See *Hamilton Gas Co. v. Watters*, (C.C.A. 4th Cir. 1935) 75 F. (2d) 176, 182.

both cases, however, the receiver continued to operate the business and did not merely liquidate the assets. This result is in accord with that reached by most courts under section 2 of the Bankruptcy Act. Where the receivers continued to administer the affairs of the corporation, it was held still to have a "principal place of business."²² However, where receivers were ordered to liquidate the assets the corporation was said no longer to have a principal place of business.²³ Presumably this same line of decisions would be followed if the location of the "principal assets" were the question involved.

A petition may also be filed under section 77B in "any territorial jurisdiction in the state in which it was incorporated."²⁴ This provision had a tumultuous legislative history.²⁵ It was ardently urged as a means of fixing a sure test of venue where there was a dispute as to where the principal assets or principal place of business were situated. It was as bitterly opposed because so frequently the state of incorporation contains none of the offices, or records, or officers of the corporation. In the end the former view prevailed, but the provision which allows the transfer of proceedings (to be considered hereafter) was inserted as a sop for the adherents to the latter view.²⁶

In the only case which has been reported arising directly under this clause the judge decided that a petition may be filed in one district court in the state in which the debtor was incorporated, although its principal assets are in the territory of another district court within the same state.²⁷ This result was within the clear meaning of the Act. The reason Congress specifically allowed a petition to be filed in *any* district within the state of incorporation is set forth in the following language of Tom D. McKeown, who

²²In re E. & G. Theatre Co., (D.C. Mass. 1915) 223 Fed. 657; In re Monarch Oil Corp., (D.C. Ohio 1920) 272 Fed. 524; Royal Indemnity Co. v. American Bond and Mortgage Co., (1933) 289 U. S. 165, 53 Sup. Ct. 551, 77 L. Ed. 1100; In re American & British Mfg. Corp., (D.C. Conn. 1924) 300 Fed. 839.

²³In re Perry Aldrich Co., (D.C. Mass. 1908) 165 Fed. 249.

²⁴Section 77B(a) found in (1934) 48 Stat. at L. 912, 11 U. S. C. A. sec. 207(a) (Supp. 1935).

²⁵For a criticism of the result of the tumult see Weiner, Corporate Reorganization: Section 77B of the Bankruptcy Act, (1934) 34 Col. L. Rev. 1173, 1196.

²⁶(1934) H. R. Rep. No. 1773, 73d Cong., 2d Sess., Ser. No. 9776, p. 5; Hanna, Corporate Reorganization under the Bankruptcy Act, (1935) 21 A. B. A. J. 73, 75.

²⁷(D.C. Ill. Aug. 9, 1934) In re Flamingo Hotel Co., C. C. H. Bankruptcy Service, Par. 3007.

was chairman of the sub-committee of the House at the time of the drafting and enactment of the debtor relief laws :

"The provision of the Act permitting the filing of the petition in any district of the state of incorporation, without regard to the principal place of business, if any, of the corporation within that state, was the result of a carefully thought-out plan by the committee which drafted this Act. The committee had before it the situations in a number of the large cities where the federal courts are badly overworked, and are sometimes the object of imposition of foreclosure or bankruptcy rings within these cities. The purpose of this provision was to permit application for reorganization to be made to the country districts in these states, and avoid the delay and possible complications that might arise in the large cities."²⁸

The three bases of jurisdiction thus far set forth may not be exclusive. The Act provides that a petition may be filed in *any* proceeding pending in bankruptcy.²⁹ Section 2, clause 1 of the Bankruptcy Act allows proceedings in bankruptcy to be instituted against a foreign corporation in any jurisdiction in which it holds property, where the corporation's principal place of business is not in the United States.³⁰ Thus the New York bank account of a foreign corporation was in one case held to be a sufficient basis of jurisdiction for bankruptcy proceedings to be instituted in New York.³¹ Any foreign corporation which had its principal place of business abroad but owned property in this country could thus file a voluntary petition in bankruptcy wherever it owned property, and subsequently file a petition under section 77B in the proceeding already pending. This would give foreign corporations an even wider choice of courts than is given domestic corporations. It would allow courts to supervise reorganizations which have only a fragment of the debtor's property within their jurisdiction. The detailed administrative work required of a court which approves a petition under section 77B makes proximity to records, assets, and parties in interest of the utmost importance.

Section 77B should, if possible, be so interpreted as not to give foreign corporations the special privilege indicated above. The devious path which must be blazed through the statutory language to discover this special privilege makes it likely that the legislators

²⁸McKeown and Langeluttig, *Federal Debtor Relief Laws*, p. 116.

²⁹Section 77B (a), found in (1934) 48 Stat. at L. 912, 11 U. S. C. A. sec. 207(a) (Supp. 1935).

³⁰Section 2(1), found in (1898) 30 Stat. at L. 545, 11 U. S. C. A. sec. 11.

³¹In *re Berthoud*, (D.C. N.Y. 1916) 231 Fed. 529.

did not fully realize the unique opportunities they were conferring on foreign corporations. Nothing has been discovered in the debates or committee reports to indicate that this problem ever was considered. The language of the Act is clear and unqualified, that "the petition shall be filed" in a court in whose territorial jurisdiction the debtor was incorporated or had its principal place of business or principal assets. There are no exceptions to this provision. The courts might both properly and wisely hold that petitions may be filed in proceedings pending in bankruptcy only if those proceedings are pending in a jurisdiction where a petition under section 77B might otherwise be filed.

The debtor's subsidiaries or its creditors may also file petitions under this Act, but no different problems of jurisdiction arise if a petition is filed by either of those parties. A subsidiary may file its petition only "with the court in which such debtor had filed its petition or answer, and in the same proceeding,"³² and creditors may file their petition only "with the court in which such corporation might file a petition under this section."³³

WHAT COURT SHOULD APPROVE A PETITION

Having considered the various territorial jurisdictions in which a petition may be filed, the next problem is to consider under what circumstances a given judge should approve a petition as filed in the proper court. Suppose there were a manufacturing company incorporated in Delaware, with its "principal place of business" in New York. A group of creditors first files a petition in Delaware, and later the debtor company files one in New York. The court in that district has had matters concerning this corporation before it for a number of years, and has become familiar with its affairs. Which petition should be approved? Obviously the court in New York is best qualified to handle the case. Yet what should the Delaware court do where a petition is first filed with it?

The first alternative would be to approve the petition and proceed with the reorganization. This should not be done. The distance from the witnesses and property and the existence of a court so much better equipped to handle the proceedings should

³²Section 77B(a), found in (1934) 48 Stat. at L. 912, 11 U. S. C. A. sec. 207(a) (Supp. 1935).

³³Section 77B(a), found in (1934) 48 Stat. at L. 913, 11 U. S. C. A. sec. 207(a) (Supp. 1935).

be a complete defense³⁴ to any petition thus filed. Moreover the danger of certain interests dominating the reorganization to the injury of others is aggravated where the proceedings are far from the center of corporate activities, before a court unacquainted with the debtor's problems.

Where proceedings are begun by a debtor's petition, the court may have some difficulty in knowing the facts concerning the comparative merits of the possible forums, because the Act does not provide for any notice of filing to be given to other parties before action on such a petition. Nor is there any provision for a hearing before such action. The Act merely provides that, "Upon the filing of such a petition or answer the judge shall enter an order either approving it as properly filed under this section if satisfied that such petition or answer complies with this section and has been filed in good faith, or dismissing it."³⁵ The proceedings are *ex parte* in nature at least until the judge's disposition of the petition. It is unfortunate that this is so. The debtor interests have an opportunity to choose their judge, and have their petition approved before the opposition gathers its forces. It is likely to be more difficult to have proceedings transferred or terminated when once begun in a partisan forum, than to have a petition dismissed originally. Even if the proceedings are transferred or brought to an early end, time and money have been wasted in the effort. In the case of creditors' petitions provision is made for service on the corporation and an answer by it.³⁶ Debtors' petitions might be more satisfactorily adjudicated if some similar provisions could be made with respect to them.

Practical difficulties are conceded to stand in the way of any such change. A debtor corporation in urgent need of reorganization can ill afford to have the approval of its petition delayed while it ferrets out each member of its many classes of widely scattered creditors in order that it may serve notice on them. It might, however, be provided that notice of the hearing be published both where the petition is filed and where the debtor was incorporated, if these places are not the same, so that watchful creditors may have the opportunity to file an answer and contest approval of the

³⁴For the theory of the defense see the discussion of the court's second alternative at footnotes 37 to 42 and text.

³⁵Section 77B(a), found in (1934) 48 Stat. at L. 912, 11 U. S. C. A. sec. 207(a) (Supp. 1935).

³⁶Section 77B(a), found in (1934) 48 Stat. at L. 913, 11 U. S. C. A. sec. 207(a) (Supp. 1935).

debtor's petition. Necessarily the hearing could not be long delayed, but creditors would have time at least to raise questions in the mind of the judge, which might otherwise not come to his attention, as to the wisdom of approving the petition. Lest creditors scramble for the debtor's assets in the interval before the hearing, provision might be made for a temporary injunction against such levies.

The second alternative, in the hypothetical case, would be for the Delaware court to dismiss the petition as not filed in good faith.³⁷ Some judges, notably Judge Julian Mack, have shown great reluctance to impair the reputation of counsel by finding that their petition was not filed in good faith, and have refused so to hold except in extreme cases.³⁸ Other courts have given the phrase as used in section 77B a new and less odious meaning. They have required, as a prerequisite of a finding of good faith, that there be likelihood of a successful reorganization,³⁹ that the debtor be in need of reorganization,⁴⁰ and that the petitioners intend to use section 77B as a vehicle of reorganization.⁴¹ "Good faith" as thus construed provides a badly needed latitude in the exercise of judicial discretion. The success or failure of the Act depends largely on its administration by the federal judges, for every corporation seeking reorganization presents unique problems from the time the petition is filed until the final order is issued. Each court should require as an element of good faith affirmative proof that under all the circumstances of the particular case the administration and reorganization could be as successfully carried on before

³⁷Either a debtor's or creditors' petition may be approved only if the judge is "satisfied" that it "has been filed in good faith." Section 77B(a), found in (1934) 48 Stat. 912, 913, 11 U. S. C. A. sec. 207(a) (Supp. 1935). It should be noted that a court which has jurisdiction must approve a petition if it contains the necessary allegations and is found to have been filed in good faith. *In re Prairie Ave. Bldg. Corp.*, (D.C. Ill. 1935) 11 F. Supp. 125.

³⁸*In re Associated Gas and Electric Co.*, (D.C. N.Y. Oct. 26, 1934) C. C. H. Bankruptcy Service, Par. 3057.

³⁹*Manati Sugar Co. v. Mock*, (C.C.A. 2d Cir. 1935) 75 F. (2d) 284; *In re Williamsport Wire Rope Co.*, (D.C. Pa. 1935) 10 F. Supp. 481, *aff'd*. (C.C.A. 3d Cir. 1935) 78 F. (2d) 1022; *In re Coronado Hotel Co.*, (D.C. Mo. July 5, 1934) C.C.H. Bankruptcy Service, Par. 3002; *In re Hotel Park Central*, (D.C., N.Y. July 5, 1935) C.C.H. Bankruptcy Service, Par. 3545; *In re Missouri-Kansas Pipe Line Co.*, (Referee's Opinion in N.D. Ill., Sept. 12, 1934) C. C. H. Bankruptcy Service, Par. 3061. But compare *In re Surf Bldg. Corp.*, (D.C. Ill. 1934) 11 F. Supp. 295; *In re Lehrenkrauss Corp.*, (D.C. N.Y. 1935) 10 F. Supp. 14.

⁴⁰*In re South Coast Co.*, (D.C. Del. 1934) 8 F. Supp. 43.

⁴¹*In re South Coast Co.*, (D.C. Del. 1934) 8 F. Supp. 43.

it as before any other federal district court. If such a procedure were conscientiously followed, expensive transfers of proceedings would be rare; instances of the domination of proceedings by a few for their own ends would be discouraged and perhaps diminished; and in most cases the court best equipped to handle the proceedings would be in charge from the start.⁴²

The third alternative would be for the Delaware court to approve the original petition and, on a separate petition, allow the proceedings to be transferred to the southern district of New York. The Act provides that, "The court shall upon petition transfer such proceedings to the territorial jurisdiction where the interests of all the parties will be best subserved."⁴³

A transfer may be ordered even before a petition is approved.⁴⁴ However, it may be transferred only to a jurisdiction in which it could have been originally filed.⁴⁵ In the hypothetical case there is compliance with this requirement, for the principal assets were in the southern district of New York. In considering whether the proceedings should be transferred, the courts consider where the debtor's records are, where its officers are, the convenience of creditors, how far the proceedings have advanced in the jurisdiction where the petition was approved,⁴⁶ and most of all which court

⁴²In this connection should be considered *In re Kelly-Springfield Tire Co.*, (D.C. Md. 1935) 10 F. Supp. 414. There it was contended that the petitioning officers would play a dominant part in the proceedings if their petition were approved rather than that filed in New York, and that their petition consequently was not filed in good faith. District Judge Chesnut said in response, at page 416: "Wherever the affairs of this Company are administered they will be administered by some federal judge for the benefit of all interests . . . wherever administration is under section 77B it is for the best interests of all concerned." This dictum ignored the long recognized dangers, already mentioned *ad nauseam*, of allowing interested parties to choose their own reorganization court without regard for the interests and convenience of all parties concerned. In the case before him Judge Chesnut held that the interests of all parties were best served by continuing the proceedings in the Maryland district court.

⁴³Section 77B(a), found in (1934) 48 Stat. at L. 912, 11 U. S. C. A. sec. 207(a) (Supp. 1935).

⁴⁴*In re Kelly-Springfield Tire Co.*, (D.C. N.Y. 1935) 10 F. Supp. 419. See *contra*, *In re Kelly-Springfield Tire Co.*, (D.C. Md. 1935) 10 F. Supp. 414, 417. Conversely, involuntary proceedings may be transferred to another district on the petition of the debtor, even where the debtor has previously answered the creditors' petition. *In re Botany Consol. Mills, Inc.*, (D.C. Del. 1935) 10 F. Supp. 267.

⁴⁵*In re Midland United Co.*, (D.C. Del. 1934) 8 F. Supp. 92; *In re Syndicate Oil Corp.*, (D.C. Del. 1934) 8 F. Supp. 213; see *In re Consolidated Gas Utilities Co.*, (D.C. Del. 1934) 8 F. Supp. 385, 386. For a note giving arguments *pro* and *con* this limitation on the right to transfer proceedings see (1935) 44 Yale L. J. 885.

⁴⁶*In re Syndicate Oil Corp.*, (D.C. Del. 1934) 9 F. Supp. 127.

is most conversant with the debtor's affairs, and where the reorganization proceedings could be most successfully continued.⁴⁷

It is useful to have in the Act such a provision for the transfer of proceedings. Where a mistake has been made, and a petition has been approved by one court although another is better equipped to supervise the proceedings, it is well for a transfer to be ordered. But transfers take time, may be granted grudgingly, and are likely to be rather expensive. Moreover, since they are granted only on petition, one party must take positive action in order for the transfer provision to effectuate the removal of the proceedings from an improper to a proper forum. Contrast the effect of the suggested interpretation of the "good faith" clause, whereby a court, even in *ex parte* proceedings, would not approve a petition until it had been affirmatively shown that it was the court best fitted to handle the case. If any real progress is to be made toward having reorganizations conducted in the best possible forum, courts should not be allowed to forego investigations of proper venue merely for want of a petition.

CONFLICTS OF JURISDICTION

No matter how careful judges may be to approve petitions only where they have jurisdiction,⁴⁸ and are as well fitted as

⁴⁷In *re Consolidated Gas Utilities Co.*, (D.C. Del. 1934) 8 F. Supp. 385; In *re Sierra Salt Corp.*, (D.C. Nev. 1934) 8 F. Supp. 922; In *re Botany Consol. Mills, Inc.*, (D.C. Del. 1935) 10 F. Supp. 267; *Watters v. Hamilton Gas Co.*, (D.C. W.Va. 1935) 10 F. Supp. 323, 333, 334.

⁴⁸A federal court of bankruptcy must take cognizance of lack of jurisdiction, and dismiss the proceedings even on its own motion. See In *re Chicago Bank of Commerce*, (C.C.A. 8th Cir. 1932) 61 F. (2d) 986, 988. In this respect all bankruptcy proceedings should be distinguished from federal equity consent receiverships, where a jurisdictional defect must be pleaded. There, where the sole ground of federal jurisdiction is diversity of citizenship, a corporation may intentionally fail to plead lack of jurisdiction to a petition filed by friendly creditors, and thereby allow the proceedings to be carried on in any district court of its own selection. *Central Trust Co. v. McGeorge*, (1894) 151 U. S. 129, 14 Sup. Ct. 286, 38 L. Ed. 98. This practice of appointing an equity receiver in a federal district where neither of the parties resides, has, however, been criticised by the state courts of Delaware and New Jersey. See Billig, *Corporate Reorganization: Equity vs. Bankruptcy*, (1933) 17 MINNESOTA LAW REVIEW 237, 254. There is some reason to believe that it is within the power of a court of equity to decline jurisdiction of its own motion in such a case. See the language of Woolsey, J., in *Municipal Financial Corp. v. Bankus Corp.*, (D.C. N.Y. 1930) 45 F. (2d) 902, 906, to the effect that: "A remedy of this kind should only be granted when the court is satisfied from the papers before it that the curative purpose for which the remedy is sought may be accomplished, and that a remedy equally adequate and appropriate to the circumstances cannot be elsewhere found." Cf. *Harkin v. Brundage*, (1928) 276 U. S. 36, 50-52, 48 Sup. Ct. 268, 72 L. Ed. 457.

anyone to administer the reorganization, cases will arise where two or more courts approve petitions and assume "exclusive jurisdiction." Two problems spring from such cases. First, where two or more courts approve petitions and all have acknowledged territorial jurisdiction, in which court should the proceedings be continued? Second, where two or more petitions are filed, which court should act first to decide questions of jurisdiction and expediency?

These problems, among others, were raised in a case of unusual jurisdictional complications.⁴⁹ The Hamilton Gas Company was incorporated in Delaware to produce gas for sale at wholesale to pipe-line companies. Its properties were chiefly in West Virginia, but some were located in Kentucky. Its prodigal president, W. A. Larner, occupied executive offices in New York. In 1932 receivers were appointed in West Virginia, Kentucky, Delaware, and New York. The business was carried on by them with success until 1934. In these years most of the actual business was transacted in West Virginia. On June 7, 1934, creditors filed a petition in West Virginia under section 77B. On June 8 the debtor, through Mr. Larner, filed a petition in New York which was approved on June 9 by the New York court, thereby giving that court "exclusive jurisdiction of the debtor and its property wherever located." On June 21 the West Virginia court approved the creditors' petition with like effect. On appeal from that decision, the circuit court of appeals for the fourth circuit held, on January 9, 1935, that if the principal place of business was in New York and the southern district of New York had jurisdiction, the West Virginia proceedings should be transferred to that court, but that if the southern district court of New York did not have jurisdiction then the southern district court of West Virginia should retain jurisdiction, since the "principal assets" of the debtor were indubitably within the latter's territory.⁵⁰ The proceedings were remanded to the southern district court of West Virginia, where it was decided, on April 8, 1935, that the southern district court of New York did not have jurisdiction.⁵¹ Meanwhile, on February 15, 1935, the New York court entered an order which declared that

⁴⁹*Hamilton Gas Company v. Watters*, (C.C.A. 4th Cir. 1935) 75 F. (2d) 176.

⁵⁰*Hamilton Gas Co. v. Watters*, (C.C.A. 4th Cir. 1935) 75 F. (2d) 176. For a discussion of this phase of the case, see Spaeth and Friedberg, *Early Developments Under Section 77B*, (1935) 30 Ill. L. Rev. 137, 141.

⁵¹*Watters v. Hamilton Gas Co.*, (D.C. W.Va. 1935) 10 F. Supp. 323.

it had exclusive jurisdiction. The next day it resettled the order to allow the proceedings in West Virginia to be prosecuted to completion.⁵²

Thus after ten months of wrangling for jurisdiction the fact was, in April, 1935, that one district court in New York and another in West Virginia had each decreed that it had "exclusive jurisdiction of the debtor and its property wherever located." Reorganization had been delayed; administration of the estate by the courts had been prolonged; fees due to trustees, committees, and counsel had been greatly increased.

Finally on July 22, 1935, the jurisdictional log jam was broken by a decision of the circuit court of appeals for the second circuit which reversed the decision of the district court for the southern district of New York that it had jurisdiction.⁵³ Even then delays and expenses did not cease, for application was made to the Supreme Court for a writ of certiorari which was not denied until December 9, 1935.⁵⁴

First, let it be assumed that both the New York and West Virginia courts had jurisdiction; that the principal place of business was in the territory of the former, the principal assets in the territory of the latter. The creditors' petition was filed first. Both petitions were approved, but that of the debtor before that of the creditors. As already mentioned, the circuit court of appeals for the fourth circuit indicated that in such a situation the New York court, which first approved the debtor's petition, should retain jurisdiction.⁵⁵

The court first stated the usual rule that "as between two courts of concurrent and co-ordinate jurisdiction, the court which first obtains jurisdiction and constructive possession of property by the filing of a bill is entitled to retain it without interference."⁵⁶ It then declared that Congress varied this rule under section 77B by providing, although indirectly, that the first court to approve a debtor's petition should have jurisdiction over the proceedings thereafter. In support of its conclusion, it pointed to that part of section 77B(a) which provides that the court which approves a

⁵²Watters v. Hamilton Gas Co., (D.C. W.Va. 1935) 10 F. Supp. 323, 333.

⁵³In re Hamilton Gas Co., (C.C.A. 2d Cir. 1935) 79 F. (2d) 97.

⁵⁴80 L. Ed. 222.

⁵⁵Hamilton Gas Co. v. Watters, (C.C.A. 4th Cir. 1935) 75 F. (2d) 176.

⁵⁶Hamilton Gas Co. v. Watters, (C.C.A. 4th Cir. 1935) 75 F. (2d) 176, at p. 178, citing Harkin v. Brundage, (1928) 276 U. S. 36, 43.

debtor's petition shall "have exclusive jurisdiction of the debtor and its property wherever located." With this it compared the apparently conflicting provision that if a creditors' petition is approved "the proceedings thereon shall continue with like effect as if the corporation had itself filed the petition or answer under this section."⁵⁷ In the following language the court indicated how the conflict could be reconciled:

"Both clauses may be given effect, if preference is given to the debtor's petition, even though a creditors' petition has been previously filed, but not previously approved. In short, since the debtor is not forbidden to file a petition after the filing of one by creditors,⁵⁸ it is reasonable to assume that the debtor may file its petition and secure the approval thereof at any time prior to action upon a creditors' petition, even though the latter be previously filed. The provision that the proceeding on the creditors' petition shall be continued after its approval as if the proceeding had been instituted by the debtor may fairly be interpreted to mean that, after the approval of a petition of either kind, the course of the proceeding shall be the same; and the provision for exclusive jurisdiction, upon the approval of the debtor's petition, may be given effect by denying to any other court thereafter the power to approve and to proceed with a creditors' petition."⁵⁹

The court then proceeded further to substantiate its conclusion that the first tribunal to approve a petition should have jurisdiction. It showed that section 77B(k) and (o)⁶⁰ incorporate within the Corporate Reorganizations Act the General Orders in Bankruptcy⁶¹ including General Order Number 6, which provides *inter alia* that "the court which makes the first adjudication of

⁵⁷Section 77B(a), found in (1934) 48 Stat. at L. 913, 11 U. S. C. A. sec. 207(a) (Supp. 1935).

⁵⁸It is provided in Section 77B(a) that creditors may file a petition only "if such corporation has not filed a petition or answer under this section."

⁵⁹*Hamilton Gas Co. v. Watters*, (C.C.A. 4th Cir. 1935) 75 F. (2d) 176, 180.

⁶⁰Section 77B(k) provides in part that "All other (those excluded are not here material) provisions of this Act, except such as are inconsistent with the provisions of this section 77B, shall apply to proceedings instituted under this section." (1934) 48 Stat. at L. 921, 11 U. S. C. A. sec. 207(a) (Supp. 1935). Section 77B(o) provides that "In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court . . . shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition or answer was approved." (1935) 48 Stat. at L. 922, 11 U. S. C. A. sec. 207(a) (Supp. 1934).

⁶¹Section 30 provides that "All necessary rules, forms and orders as to procedure and for carrying this Act into force and effect shall be prescribed, and may be amended from time to time, by the Supreme Court of the United States." (1898) 30 Stat. at L. 554, 11 U. S. C. A. sec. 53.

bankruptcy shall retain jurisdiction over all proceedings therein until the same shall be closed."⁶²

Although the conclusions of the court were mere dicta, it is likely that they will be followed where there are conflicts between courts which have acknowledged territorial jurisdiction. The following is a summary of these conclusions. (1) Where a creditors' petition is filed and approved, a debtor's petition is then of no avail. (2) Where a creditors' and a debtor's petition are filed in that order and approved in reverse order, the court approving the debtor's petition has jurisdiction.⁶³ (3) However, in that situation, if the creditors' petition is first approved, the court so acting probably has jurisdiction thereafter by the terms of General Order No. 6.⁶⁴ (4) By the same token if two groups of creditors file petitions with different courts the first court to approve a petition has jurisdiction. (5) Where a debtor's petition or answer is first filed a creditors' petition may not thereafter be filed, to say nothing of being approved.⁶⁵

The rules thus far set forth define which court shall have jurisdiction after the approval of one or more petitions. They do not prevent races for hasty and inadequately considered approval. They do not decide which court should determine questions of doubtful jurisdiction or which should select, in the first instance, the tribunal best fitted to take charge of the reorganization. This problem of priority of courts is the second raised by the various cases involving the Hamilton Gas Company.

Where two or more petitions are filed "against"⁶⁶ the debtor

⁶²(1898) 172 U. S. 654.

⁶³In one case a creditors' petition was followed by that of the debtor in the same court. The latter was first approved, and the creditors' petition was dismissed. In *re* National Department Stores, Inc., (D.C. Del. 1934) 8 F. Supp. 19. In another case the debtor's petition was filed after that of the creditors, but in a different court. The debtor's petition was first approved, and the proceedings under the creditors' petition were transferred to the forum selected by the debtor. In *re* Kelly-Springfield Tire Co., (D.C. N.Y. 1935) 10 F. Supp. 419. It has been contended, however, that the debtor must answer a prior creditors' petition before it can file one of its own. Oliver, *The Corporate Reorganization Amendment to the Bankruptcy Act*, (1935) 9 Temple L. Q. 144, 151-153.

⁶⁴Note 62 *supra* and text. See also *Humphrey v. Bankers Mortgage Co.*, (C.C.A. 10th Cir. 1935) 79 F. (2d) 345, 350.

⁶⁵See Note 58. Where one creditors' petition is filed and approved after answer by the debtor, another creditors' petition may not be filed. In *re* Middle West Utilities Co., (D.C. Del. 1934) 9 F. Supp. 38.

⁶⁶Section 1(1) of the Bankruptcy Act provides that "'A person against whom a petition has been filed,' shall include a person who has filed a voluntary petition," (1898) 30 Stat. at L. 544, 11 U. S. C. A. sec. 1(1).

and one is filed in the district where the debtor has his domicile, General Order No. 6 provides that "the first hearing shall be had in the district in which the debtor has his domicile."⁶⁷ This Order has been held to be applicable to corporations.⁶⁸ Presumably this also applies under section 77B so that where two petitions are filed, one in the state of the debtor's incorporation, a court in such state would have priority. If it approved the petition it would have jurisdiction. In many cases, as in the *Hamilton Gas Case* no petition is filed in the state of the debtor's incorporation, so that General Order No. 6 does not solve the problem. Moreover, since a corporation's state of incorporation is so often far removed from the center of its activities, priority should not be given to the courts on the basis of corporate domicile.

Under the older sections of the Bankruptcy Act and General Order No. 6 it was held, in the case of partnerships, that the court with which a petition was first filed should decide which of two courts could proceed with the case for the greatest convenience of the parties in interest.⁶⁹ It was similarly held that where there was doubt as to the domicile or principal place of business of a debtor, the court with which a petition was first filed should have jurisdiction to decide the question of proper venue and that the other courts with which petitions were filed should stay proceedings to await the result of the first court's investigation.⁷⁰

If corporate reorganizations are to be facilitated, the courts must see to it that the priority of hearings under section 77B is clarified in some such manner. There must be no repetition of the disgraceful eighteen-month struggle for jurisdiction in the *Hamilton Gas Case*. There should be a definite rule as to which court, of those with which petitions are filed, shall have the power first to decide not only whether it has jurisdiction, but also whether it is best fitted to supervise the reorganization. It should also be set out in what order other courts should act if the court which is granted priority dismisses the petition. Priority should be fixed by a standard which is definite, which covers all situations, yet which as accurately as possible, consistently with the first two

⁶⁷(1898) 172 U. S. 654.

⁶⁸In re United Button Co., (D.C. N.Y. 1904) 132 Fed. 378; In re Globe Sec. Co., (D.C. N.Y. 1904) 132 Fed. 709; In re New Era Novelty Co., (D.C. N.J. 1916) 241 Fed. 298.

⁶⁹In re Sterne & Levi, (D.C. Tex. 1911) 190 Fed. 70.

⁷⁰In re Waxelbaum, (D.C. N.Y. 1899) 98 Fed. 589; In re Elmira Steel Co., (D.C. N.Y. 1901) 109 Fed. 456; In re Tybo Mining & Reduction Co., (D.C. Nev. 1904) 132 Fed. 697.

qualifications, represents the court best fitted to supervise the reorganization.

What test of priority might be prescribed which would answer these requirements? Where one of the courts in which a petition is filed has appointed a primary receiver of the debtor in prior receivership proceedings, its familiarity with the debtor's affairs should entitle it to the first say as to where proceedings under section 77B should be conducted.

If none of the courts petitioned has so acted, which court should take precedence? As already pointed out the location of a corporation's domicile should not be determinative, for it has no necessary connection with the site of the corporate activities, where most of the witnesses and records are likely to be found. Petitions filed with courts in whose territory the principal place of business or principal assets of the debtor are alleged (with some basis in fact) to be located might wisely be given precedence in the order of filing. Finally could be ranked, also in the order of filing, those petitions filed with courts whose jurisdiction is alleged to rest solely on the fact that the debtor was incorporated within the bounds of its state.

There has been some suggestion in the cases that a debtor's petition, where filed promptly after that of creditors, should be given priority because section 77B is "for the relief of debtors."⁷¹ The purpose of the Act is, however, to readjust the affairs of debtor corporations so that the interests not only of the debtor but also of creditors, employees, and the public may be preserved and protected in so far as possible.⁷² Experience has shown the debtor to be more likely than others to misuse the Act. Moreover the so-called debtor's petition may be merely a cloak for the petition of alert creditors who oppose the group of creditors who filed an earlier petition.⁷³ The hearing on a petition should not be given preference solely because it was filed by the debtor.

The suggested solution of the problem would work as follows in the *Hamilton Gas Case*. After the filing of the creditors' and debtor's petitions, the West Virginia court, with which the former was filed, would be the first court to consider whether the

⁷¹See *Humphrey v. Bankers Mortgage Co.*, (C.C.A. 10th Cir. 1935) 79 F. (2d) 345, 350, and cases cited therein.

⁷²See *In re Studebaker Corp.*, (D.C. Ind. 1935) 9 F. Supp. 426, 428.

⁷³Spaeth and Friedberg, *Early Developments Under Section 77B*, (1935) 30 Ill. L. Rev. 137, 143; *In re South Coast Co.*, (D.C. Del. 1934) 8 F. Supp. 43.

creditors' petition should be approved. It will be remembered that the primary receiver had been appointed by that court and that most of the debtor's property had been located in its jurisdiction. The West Virginia court would then find that it had jurisdiction because the "principal assets" of the debtor were located in its territory. It would then determine whether the proceedings might best be conducted there or elsewhere. On the facts of the *Hamilton Gas Case*, if the question had come up, the West Virginia court should have found originally that it was best qualified to handle the case. If, however, it found in favor of the Southern District Court of New York on this score, it would consider whether the New York court had jurisdiction. An affirmative answer should result in the dismissal of the petition as not filed in good faith, and the subsequent opening of hearings in the New York court, the only other court with which a petition was filed. If it were found that the New York court did not have jurisdiction, it would decide whether it was the next best court, of those with which petitions were filed, to supervise the proceedings. If it found in its own favor, it would approve the petition provided the other requisites under the Act were satisfied. After approval of the petition the court would have full power to transfer the proceedings to another district if it should later seem best so to do.

The jurisdiction of the court which approved the petition could still be attacked in collateral proceedings,⁷⁴ but the dangers of disputes over jurisdiction would be minimized if an orderly sequence of hearings were thus prescribed. That such regulations might have the force of law, it is suggested that the Supreme Court, under its authority granted by section 30 of the Bankruptcy Act, as incorporated in section 77B,⁷⁵ should adopt a new general order in bankruptcy to supplant General Orders Numbers 6 and 7,⁷⁶ in so far as they apply to proceedings under section 77B. The following is submitted as the possible form of such an order:

⁷⁴Watters v. Hamilton Gas Co., (D.C. W.Va. 1935) 10 F. Supp. 323, 333.

⁷⁵See footnotes 60 and 61.

⁷⁶General Order No. 7 regulates priority of petitions, filed with the same court, according to the chronological order of the acts of bankruptcy alleged therein. (1898) 172 U. S. 655, Under section 77B creditors need not allege an act of bankruptcy "if a prior proceeding in bankruptcy or equity receivership is" pending. (1934) 48 Stat. at L. 913, 11 U. S. C. A. sec. 207(a) (Supp. 1935). General Order No. 7 is thus of no aid in many proceedings under section 77B, and does not help to determine the court best equipped to reorganize the debtor.

In case two or more petitions are filed in different districts against⁷⁷ a debtor corporation under section 77B, the first hearing shall be had in the district in which a primary receiver of the debtor had previously been appointed, or, if there be none such, then hearings shall be held in the following order: first, in the order in which such petitions are filed, in those courts in whose territorial jurisdiction it is alleged (with some basis in fact) that the debtor has its principal place of business or principal assets; second, in the order in which such petitions are filed, in those courts with which petitions are filed which allege as the sole basis of jurisdiction that the debtor is incorporated in the state in which the court is located. The proceedings upon the other petition shall be stayed until an adjudication is made upon the petition first heard; and if the petition first heard is approved, the court which so decrees shall retain exclusive jurisdiction over all proceedings until the same shall be closed. But the court so retaining jurisdiction shall, if satisfied that the interests of all the parties will be best subserved if another court proceeds with the cases, and that such other court has jurisdiction, order them to be transferred to that court.

If the petition first heard is dismissed, the remaining petitions shall be adjudicated according to the priorities above prescribed.

In case two or more petitions are filed against a debtor corporation in the same district under section 77B, they shall be heard in the order of filing.

This order supplants General Orders Number 6 and 7, insofar as they are applicable to proceedings under section 77B.

Such an order would regulate the mechanics of venue. It would be left in the discretion of each judge to determine whether his court, of those which have jurisdiction and have been petitioned, is best equipped to proceed with the case. Under such an Order, as in all phases of proceedings under section 77B, the public benefits to be derived from the Act would depend on the integrity and wisdom of the federal judges.

⁷⁷See footnote 66.